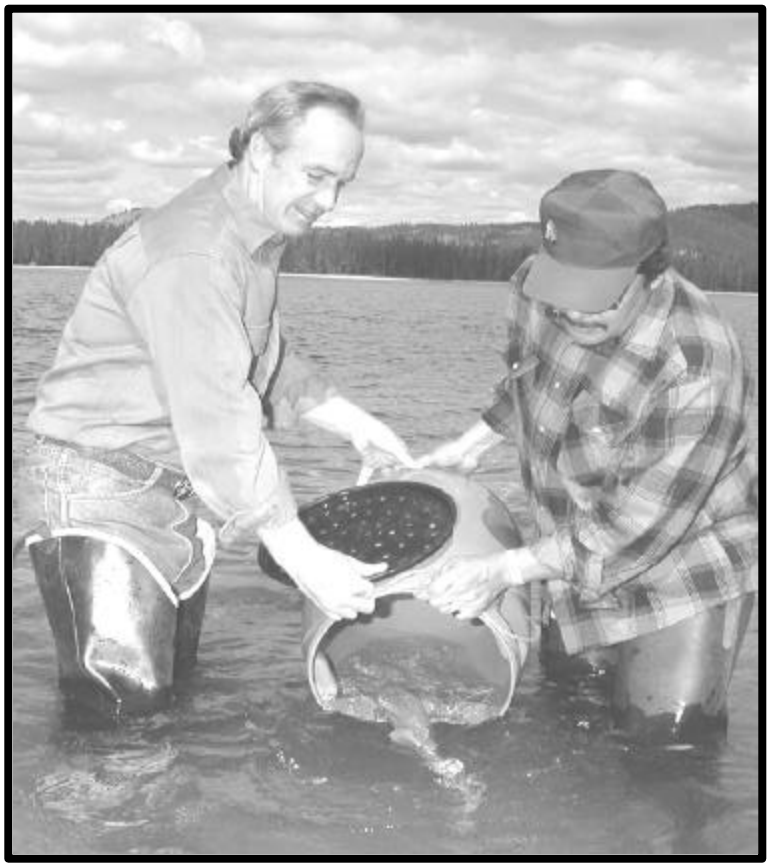
COMMENTS OF THE STATE OF IDAHO

EXECUTIVE SUMMARY

FEDERAL CAUCUS
CONSERVATION OF COLUMBIA BASIN FISH:
DRAFT BASIN-WIDE SALMON RECOVERY STRATEGY
(FINAL DRAFT ALL-H PAPER)



DIRK KEMPTHORNE
GOVERNOR

SEPTEMBER 29, 2000

Cover: Governor Dirk Kempthorne and Shoshone-Bannock Tribes Council member Larry Bagley release a sockeye salmon from the Idaho Department of Fish & Game captive brood stock program into Redfish Lake September 6, 2000.

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The obvious purpose of the requirement that each agency "use the best scientific and commercial data available" is to ensure that the [federal Endangered Species Act] not be implemented haphazardly, on the basis of speculation or surmise. While this no doubt serves to advance the ESA's overall goal of species preservation, we think it readily apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives.

Bennett v. Spear, 520 U.S. 154, 176-77 (1997).

I. INTRODUCTION

The following are the comments of the State of Idaho on the Federal Caucus' July 27, 2000, publication entitled "Conservation of Columbia Basin Fish: Draft Basin-wide Salmon Recovery Strategy" formerly referred to as the "All-H Paper." Hereinafter, the Draft Basin-wide Salmon Recovery Strategy will be referred to simply as the "Conceptual Recovery Plan" or "Plan."

Comments provided by the State of Idaho in response to the July 27, 2000, Federal Columbia River Power System (FCRPS) Biological Opinion ("FCRPS BiOp") prepared by the National Marine Fisheries Service (NMFS) are hereby incorporated by reference. The State intends to timely supplement these comments as appropriate.

A. PREFACE

Idaho makes these comments and sets forth its recommended actions with the understanding that the current decision making framework by NMFS is that breach of the four lower Snake River dams will not occur in the near term. If within the next five-year period the status of these dams or any other major component of the FCRPS has changed, Idaho will take this in to account for possible reevaluation of recovery planning.

The Plan's analysis of each of the "H's" [Habitat, Hatcheries, Harvest, and Hydropower] will be assessed. Idaho will use this assessment to maximize the dedication of resources to the problem of salmon recovery. A fifth "H" - Humans - is factored to assure an appropriate balance in the measures applied for the solution. Each of the discussion units will include Idaho's particular perspective as well as that of the recent Four Governors Recommendations.

II. SUMMARY OF COMMENTS

The operation of hydropower projects have undoubtedly benefited the economic vitality of Idaho and the Pacific Northwest. With twelve evolutionary significant units ("ESUs") listed under the Endangered Species Act spread across the Pacific Northwest (eight below the four lower Snake River dams and four species which return as adults above the dams), it is evident that there are many significant factors that are responsible for the decline of the stocks. The Executive Summary acknowledges that "new research suggests that the greatest opportunities for survival improvements may lie outside the scope of the hydropower corridor," (Vol. 1, p.1-2), and Idaho agrees with the Caucus that "[s]uccessfully implementing actions in the habitat, harvest, and hatchery sectors will be necessary for salmon recovery, regardless of the ultimate decisions by Congress on the subject of reconfiguring federal dams." (Vol. 1, p.10). The State adds that freshwater and ocean habitat should be factored into the proposed action.

Idaho is concerned about performance standards and deadlines contained in the Plan and in the FCRPS BiOp. The BiOp sets performance standards within each "H." However, the structure of the performance standards across all of the H's render it extremely difficult to ascertain if they are being met, thus leaving them open to manipulation and interpretation. This scenario sets the stage to hold the FCRPS accountable for any failure to meet performance standards regardless of whether these standards are met because of FCRPS effects, effects caused by other human-caused activities, or natural effects. The State of Idaho supports off-site mitigation that is spread proportionately across the H's if it is accountable and has a reasonable nexus to the lifecycle improvement for which it is targeted.

But Idaho continues to question whether *more* water needed by Idaho irrigators and municipalities should be spared to satisfy an unsubstantiated biological benefit. To Idaho, the assets dedicated to answering these questions are only one factor in what must be, out of necessity, a regional effort in improving the vitality of the species.

Additionally, while the State supports improvement across all of the Hs, it does so with the assumption that the role of Idaho in achieving success will be paramount, and that state law and state processes will be respected by the federal government. These concerns include respect for private property rights and that voluntary habitat improvement will occur on a willing buyer/seller basis pursuant to state law.

III. SPECIFIC COMMENTS ON THE HABITAT, HARVEST, HATCHERY, AND HYDROPOWER COMPONENTS OF THE CONCEPTUAL RECOVERY PLAN SPECIFIC COMMENTS

A. THE FIFTH "H" - HUMANS

IDAHO'S PERSPECTIVE:

> **REGIONAL SALMON RECOVERY EFFORTS HAVE THE REAL POTENTIAL TO UNFAIRLY BURDEN IDAHO'S CULTURE AND ECONOMY.**

FOUR GOVERNORS RECOMMENDATION:

> **THE [REGIONAL] APPROACH MUST ADDRESS THE SO-CALLED "FOUR HS" OF HUMAN ACTIVITIES THAT INFLUENCE FISH AND WILDLIFE SURVIVAL -- HABITAT, HYDROPOWER, HARVEST AND HATCHERIES AND ALSO ACCOUNT FOR WHAT WE CALL THE "FIFTH H" -- THE IMPACT OF THESE ACTIONS ON HUMANS. STRATEGIES AND ACTIONS MUST BE BIOLOGICALLY SOUND, ECONOMICALLY SENSITIVE, AND SUFFICIENTLY FLEXIBLE TO ACCOMMODATE ALTERNATIVE APPROACHES DEPENDING ON WHAT WORKS BEST.**

B. HABITAT

IDAHO'S PERSPECTIVE:

THE DRACONIAN IMPACT OF THE FEDERAL ENDANGERED SPECIES ACT MAKES VOLUNTARY HABITAT RESTORATION, EVEN IF ESSENTIAL FOR THE SPAWNING AND REARING OF SALMON, LESS THAN DESIRABLE FOR PRIVATE LANDOWNERS AND THE STATES.

FOUR GOVERNORS RECOMMENDATION:

WITH SNAKE RIVER AND OTHER DAMS IN THE FEDERAL COLUMBIA RIVER POWER SYSTEM REMAINING IN PLACE, SYSTEMWIDE HABITAT IMPROVEMENTS THAT RESPECT PRIVATE PROPERTY RIGHTS, FOCUSED PARTICULARLY IN THE TRIBUTARIES AND THE ESTUARY, BECOME AN EVEN MORE CRITICAL COMPONENT OF SALMONID AND AQUATIC SPECIES RECOVERY.

PROPOSED HABITAT MEASURES

Habitat in General

- Predator control should maintain a strong presence in regional debate over salmon recovery.
- Federal funds should be made available to Idaho to provide the scientific infrastructure for voluntary habitat conservation planning by those who might decide to utilize this tool under Section 10 of the ESA.
- Study stream fertilization, including but not limited to, carcass disposal.
- All habitat implementation actions should be authorized and implemented through the Office of the Governor, Office of Species Conservation.

Screening

- Continue to seek federal funding sources for diversion screening.
- Diversion consolidation projects should be funded to improve water conservation and reduce multiple screening and biological impacts.

Predator Control

- Develops and implement a plan to reduce Caspian terns, as well as double-breasted cormorants and gulls, to mid-1980s levels by 2002. As listed fish stocks are recovered, reassess appropriate balance of fish and birds.
- Ensure no nesting occurs near the salt/freshwater interface by lowering all artificially created dredge-spoil islands to below high-tide levels.

- Assist natural revegetation of all islands not located in the salt/freshwater interface.
- Actively harass birds foraging on smolts near the salt/freshwater transition zone.
- Identify and create alternative nesting sites outside of the lower Columbia River and estuary. Encourage birds to utilize these nesting sites.
- Restore natural connectivity of estuary wetlands and tidal zones by removing dikes created by dredge spoils.
- Do not allow shipping channel dredging to further diminish natural estuary habitats.
- The NMFS should non-lethally remove individual opportunistic pinnipeds from areas where adult salmonids are concentrated and particularly vulnerable.
- Congress should amend the Marine Mammal Protection Act to include lethal take by state and federal resource management agencies and commercial fishers.
- Congress should support housing facilities for pinnipeds at inland zoos in order to facilitate placement of these animals.

Water Quality

- Establish uniform temperature gathering methods and protocols to assure consistency between federal, state and tribal data.
- Continue to utilize the TMDL and 303(d) process already in place for water quality.
- Continue to implement agricultural conservation land management practices with a priority on anadromous waters and tributaries.
- Integrated rule curves should be developed for Dworshak and other appropriate reservoirs.

Land Management Practices

- Continue implementing the Idaho Forest Practices Act and site specific practices to protect water quality within forested areas.
- Provide federal funds to develop the necessary scientific infrastructure for informed decision making by those assessing voluntary habitat conservation planning under Section 10 of the ESA.

Estuary/Ocean Conditions

- Identify any differential mortality by evolutionary significant unit (ESU) related to different growth rates and ocean distribution.
- Research to establish baseline for growth and survival in ocean in good and bad years.
- Evaluate actions in freshwater for the effects of marine survival.

C. HARVEST

IDAHO'S PERSPECTIVE:

HARVEST IMPACTS ON LISTED ADULT SALMON AND STEELHEAD MUST BE RESPONSIVE TO CONSERVATION NEEDS OF THE FISH. JUST AS WITH THE OTHER HS, THE IMPERILED STATUS OF LISTED STOCKS REQUIRES MODIFICATION IN THE HARVEST ARENA.

FOUR GOVERNORS RECOMMENDATION:

WE RESPECT THE LEGAL STATUS AND CULTURAL IMPORTANCE OF INDIAN TREATY FISHING RIGHTS. CHANGES IN HARVEST MANAGEMENT SUGGESTED BELOW MUST BE DEVELOPED IN PARTNERSHIP WITH THE TREATY TRIBES SO THEY ARE CONSISTENT WITH THE ONGOING HARVEST AND PRODUCTION LITIGATION UNDER *U.S. V. OREGON*, AND ALSO WITH FEDERAL AND STATE GOVERNMENTS TO COMPLY WITH THE PACIFIC SALMON TREATY.

PROPOSED HARVEST MEASURES

Harvest In General

- Harvest practices must make a transition from fisheries where more than one stock is present to fisheries where a single stock is present. Fishery managers need to expand the use of existing selective fishery techniques.
- The region must launch an aggressive program to understand more about migration timing and movement of individual stocks to develop better selective fishing techniques.
- There must be a strong regional commitment to providing financial incentives to move toward selective fisheries or other means to reduce impacts and to provide economic mitigation to affected communities.
- The region must acknowledge the legal status and cultural importance of Indian treaty fishing rights. Changes in harvest management must be developed in partnership with the states, federal government, and the tribes.
- Future increases in harvest rates should be tied to sustained improvements in wild stock productivity, not to yearly swings in escapement. Basing harvest rates on sustained improvements in underlying productivity will ensure that harvest does not unduly constrain population rebuilding.
- Study the possibility and effectiveness of salmon refuges

Ocean Harvest

- The federal government should strive for a biologically based ocean harvest regime to encourage selective fishing techniques and economic incentives to reduce impacts to listed stocks.

Bi-Catch

- Provide random observers on fishing vessels so that issues related to bi-catch mortality can be assessed.

Snake River Basin Non-Tribal Fisheries

- Determine appropriate harvest levels based on fishery impacts to listed fish.
- Continue fish marking program to ensure accurate differentiation of listed and non-listed fish and only promulgate selective fisheries targeting non-listed hatchery fish.
- Require immediate release of all listed adult salmon and steelhead caught in sport fisheries. Continue to use season and area fishing closures to further protect adult salmon and steelhead.
- Ensure that fish stocking from mitigation hatcheries minimizes predation and competition with listed fish, and does not focus fishing pressure on key natural production areas.
- Protect listed juvenile salmon and steelhead in resident trout fisheries by marking hatchery resident trout and enforcing catch-and-release or other restrictive regulations in key natural production or migration areas for listed fish.
- Provide adequate monitoring and evaluation of fisheries to detect unanticipated impacts and adapt programs accordingly.

Snake River Basin Tribal Fisheries

- Determine appropriate harvest levels based on fishery impacts to listed fish.
- Maintain ceremonial and subsistence fisheries targeted on hatchery salmon and steelhead adults.
- Minimize impacts to listed stock by:
  1) not allowing fisheries in areas with only naturally produced listed fish;
  2) focusing fisheries in areas without listed fish, or with primarily hatchery-supported listed or non-listed stocks;
  3) ensuring fishery location, timing and magnitude are based on conservation criteria for listed stocks; and
  4) encouraging selective fishing techniques allowing live release of listed fish.

Lower River Non-Tribal Fisheries

- Determine appropriate harvest levels based on fishery impacts to listed fish.
- Require live release of all listed spring/summer chinook and steelhead caught in the mainstem of the Columbia River.

- Develop genetic or other methods to differentiate listed and non-listed fall chinook to allow live release of listed fish and better shaping of fisheries to protect listed fish.
- Investigate the opportunity to mark all non-listed hatchery fall chinook and focus the fishery on these stocks with reduced daily and seasonal bag limits on all unmarked fall chinook.
- Focus fisheries on non-listed fish at locations and during seasons that help reduce catch of listed fish.
- Use estimated delayed mortality for caught and released listed fish to determine magnitude of fishery.
- Provide federal financial compensation for all foregone fishery benefits resulting from conservation requirements. Provide financial incentives for developing and implementing selective fishing or other conservation techniques.

Lower River Tribal Fisheries

- Determine appropriate harvest levels based on fishery impacts to listed Snake River spring/summer chinook, A-run steelhead and sockeye.
- Reduce current level of impact on listed fall chinook and B-run steelhead while maintaining or increasing harvest of non-listed fish.
- Develop selective fishing techniques and ensure listed and non-listed fish are distinguishable within those fisheries.
- Maintain marking programs to differentiate listed steelhead and spring/summer chinook from non-listed fish. Develop methods to differentiate listed and non-listed fall chinook to allow live release of listed fish and better shaping of fisheries to protect listed fish.
- Employ and evaluate nine-inch mesh gillnets and more selective placement of gillnets.
- Require live release of all listed fish caught in platform fisheries
- Develop additional platform fisheries at the dams associated with fish ladders.
- Develop other selective fishing techniques to better conserve listed stocks while maintaining or enhancing harvest of non-listed stocks.
- Investigate opportunities to mark all non-listed hatchery fall chinook and focus mainstem fishery on these stocks with reduced daily and seasonal limits on all unmarked fall chinook.
- Ensure conservation benefits resulting from proposed measures accrue proportionately to the spawning grounds.
- Provide federal financial compensation for all foregone fishery benefits resulting from conservation requirements.
- Provide financial incentives for developing and implementing selective fishing or other conservation techniques.
- Exploration of a “fish bank” that would facilitate conservation of endangered fish stocks while acknowledging and protecting tribal treaty fishing rights.

D. HATCHERIES

IDAHO'S PERSPECTIVE:

HATCHERY PROGRAMS, AS A MEANS OF SUPPLEMENTATION FOR LISTED FISH STOCKS, ARE UNFAIRLY MINIMIZED AS A COMPONENT OF SALMON RECOVERY.

FOUR GOVERNORS RECOMMENDATION:

IT IS TIME TO RECOGNIZE THAT HATCHERIES ARE USED FOR MULTIPLE PURPOSES, PRIMARILY PRODUCING FISH FOR HARVEST BUT ALSO FOR REBUILDING NATURALLY SPAWNING POPULATIONS THROUGH THE TECHNIQUE OF SUPPLEMENTATION AND FOR CAPTIVE BROODSTOCK EXPERIMENTS. CAREFUL THOUGHT MUST BE GIVEN TO HOW THESE TECHNIQUES COULD MAXIMIZE THE EFFICIENCY OF FISH PRODUCTION TO PROVIDE TREATY, SPORT AND COMMERCIAL HARVEST OPPORTUNITIES WHILE ALSO PROTECTING AND REBUILDING UNIQUE FISH POPULATIONS AND COMPLYING WITH EXISTING LAWS AND LEGAL PROCESSES, SUCH AS THE *U.S. V. OREGON* LITIGATION.

PROPOSED HATCHERIES MEASURES

Hatcheries in General

- The use of hatcheries to provide harvest is recognized as a legitimate goal. However, hatcheries must be operated in a manner that avoids significant impacts on listed fish.
- Declining hatchery and non-hatchery stocks may require temporary shifts in some hatchery objectives and operations to aid conservation. In the short-term, as conservation hatchery techniques are developed and evaluated, existing hatchery facilities may be used as appropriate. As conservation hatchery techniques are refined, different facilities may be required to optimize effectiveness.
- The current hatchery system shall be operated to provide for a mix of production strategies and objectives.
- Make hatchery life more like life in the wild.
- Study/Implement volitional release.

Hatcheries as a Means to Conserve or Boost Naturally Spawning Stocks

1) Spring / summer Chinook

- Continue traditional juvenile supplementation utilizing local broodstocks in the upper Salmon River, Pahsimeroi River, South Fork Salmon River and Johnson Creek.
- Maintain traditional juvenile and adult supplementation utilizing non-local broodstocks in the Clearwater drainage, mainstem Yankee Fork Salmon River and Panther Creek.
- Continue captive rearing supplementation in the Lemhi River, East Fork Salmon River, and West Fork of the Yankee Fork of the Salmon River.

2) Fall Chinook

- Continue tribal supplementation in the Clearwater River and Snake River below Hells Canyon Dam.
- As adults return, investigate opportunities to develop local supplementation broodstocks.
- Reduce supplementation using Lyons Ferry Hatchery broodstock.
- Captive breeding supplementation in ongoing Oregon studies.
- Investigate opportunities to develop fall chinook supplementation and harvest mitigation programs specified in existing IPC settlement agreement.

3) Steelhead

- Continue tribal initiatives for traditional supplementation using non-local hatchery smolts in upper Salmon River, South Fork Clearwater River.
- Develop local broodstocks for traditional supplementation with smolts in some upper Salmon River tributaries, Little Salmon River, Middle Fork Clearwater River, and selected lower Clearwater tributaries.
- Continue tribal egg-box program in upper Salmon River.
- Develop an analytical approach to quantify the relative and absolute extinction risks for individual and aggregate populations within the Snake River ESUs. Use this information, in concert with research results from conservation hatchery programs, to indicate the risks and benefits of expanding conservation hatchery approaches into additional subbasins. Decisions should consider the level of uncertainty and demonstrated efficacy of conservation hatchery approaches, the extinction risk of target populations, the previous history of hatchery influence on target populations, and the desire to implement a suite of conservation approaches, including refuge areas, throughout the Basin.

Hatcheries to Conserve or Boost Naturally Spawning Stocks

- Pursue a balanced mix of conservation hatchery strategies to determine the most effective approaches and maximize benefits while minimizing risks. Select strategies based on conditions in target watersheds.
- Relatively aggressive approaches should be tested in areas where native stocks have been locally diminished or areas with extensive hatchery influence from non-local sources.

More cautious use of conservation hatchery approaches can be tested in areas with previous hatchery influence and existing natural production of native fish.

- With local cooperation, certain watersheds should be maintained as wild fish refuges as a hedge against uncertainty inherent in artificial propagation, as well as "controls" for evaluating conservation hatchery efforts.
- Define success of conservation hatchery programs as maintaining or increasing natural production without reducing natural productivity.
- Continue ongoing or planned conservation hatchery programs, using an experimental approach to refine techniques and determine benefits and risks. Maintain a spectrum of strategies throughout the Columbia Basin to "spread-the-risk" and maximize learning, including traditional supplementation with juveniles and adults using local and non-local broodstocks, captive rearing, captive breeding, adult outplants, and egg-boxes.

Hatchery Management to Avoid Impacts on Listed Stocks

- Continue hatchery reforms designed to minimize adverse ecological impacts to listed fish.
- Maintain reduced levels of steelhead smolt releases in natural production areas designated through the ESA permitting process.
- Maintain restructured release locations of steelhead smolts designated through the ESA permitting process.
- Continue to only allow chinook releases from locally derived broodstocks in the Salmon River drainage, with exceptions for areas where native runs are diminished or mixed with non-local hatchery stocks.
- Continue implementation of hatchery practices recommended by the Integrated Hatcheries Operations Team and the Artificial Production Review.
- During interim, focus of local broodstock development from listed fish will be for conservation hatchery programs and not harvest-oriented programs.
- Make hatchery life more like life in the wild.
- Expand research for steelhead and chinook mitigation programs to evaluate actions and further reduce adverse ecological impacts.
- Ensure adequate funding for implementation of these measures.

E. HYDROPOWER

IDAHO'S PERSPECTIVE:

> **FLOW AUGMENTATION FROM THE UPPER SNAKE RIVER BASIN HAS NOT BEEN SHOWN TO PROVIDE A BIOLOGICAL BENEFIT . MEANWHILE, AS THE DEBATE OVER DAM BREACHING HAS ENSUED, THERE HAS BEEN NO SIGNIFICANT CAPITAL INVESTMENT IN IMPROVING FISH PASSAGE AT THOSE HYDROPOWER PROJECTS.**

FOUR GOVERNORS RECOMMENDATIONS:

> **[F]EDERAL AGENCIES MUST DOCUMENT THE BENEFITS OF FLOW AUGMENTATION AND THE PRECISE ATTRIBUTES OF FLOW THAT MAY MAKE IT BENEFICIAL.**
> **[W]E SUPPORT FURTHER MODIFICATIONS TO THE CONFIGURATION AND OPERATION OF THE HYDROSYSTEM WHERE APPROPRIATE AND NECESSARY TO BENEFIT FISH AND SO LONG AS THE MODIFICATIONS DO NOT JEOPARDIZE THE REGION'S RELIABLE ELECTRICITY SUPPLY.**

PROPOSED HYDROPOWER MEASURES

Flow Augmentation

- No Idaho water shall be dedicated for flow augmentation except as pursuant to state law.

Transportation

- The success in survivability due to trucking and barging warrants that the program be continued while additional transportation research is conducted.

Minimum Gap Runner Turbines

- Research and testing of Minimum Gap Runner (MGR) turbines should continue at Bonneville Dam with the goal of installation at the four lower Snake River dam projects upon retirement of original turbines.
- Congress should increase the funding for the MGR program.

Dam Modifications

- Bypass systems, turbine screens, fish collectors and fish ladders should be improved at all of the four lower Snake River dams as soon as possible.
- Pit tag detectors at all dams.